

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3574</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>

F.No:- V.33/15-02/OA/2019

आदेश की तारीख/Date of Order : - 11.03.2021  
जारी करने की तारीख/Date of Issue :- 11.03.2021

DIN No.:20210364WT0000000BB8

द्वारा पारित/Passed by:-

एम. एल. मीणा / M.L.Meena

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 58/ADC/2020-21/MLM**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाडी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा. जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(83) उक्त अपील की प्रति।

(84) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

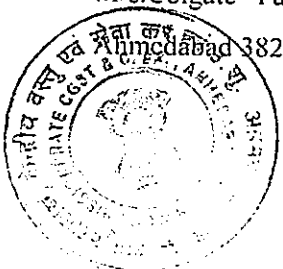
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(83) Copy of accompanied Appeal.

(84) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No.V.33/15-02/OA/2019 dated 30.01.2020 issued to M/s.Colgate Palmolive India Ltd, SM-02, GIDC Industrial Estate, Near BOL Village, Sanand,

Ahmedabad 382 170.



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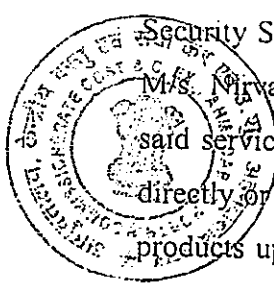
Brief Facts of the Case:

M/s. Colgate Palmolive India Ltd., SM-02, GIDC Industrial Estate, Near BOL Village, Sanand 382170( hereinafter referred to as "the said assessee") is engaged in the manufacture of Preparations for Oral or Dental Hygiene Paste falling under Chapter Tariff Head 33061020 of the Central Excise Tariff Act, 1944 for which they were holding Central Excise Registration No. AAACC4309BEM0079. The said assessee was also availing benefit of CENVAT Credit under the provisions of CENVAT Credit Rules, 2004.

2. During the test check of records of the said assessee for the period 2014-15 to 2016-17 by CERA, it was observed that during financial year 2016-17 the assessee had wrongly availed the Cenvat Credit on various input services which were not eligible as input services as per the Cenvat Credit Rules 2004. Details of Credit availed by the assessee from various service provider during the financial year 2016-17 & 2017-18 (upto the month June-17) as submitted by them are as under :-

Sr. No.	Name of Service Provider	Description of Service	Cenvat Credit Availed During 2016-17 (in Rs.)	Cenvat Credit Availed During 2017-18 (April June-17) (in Rs.)	Total Cenvat Credit availed (in Rs.)
1	M/s. Anin Consultancy Services Pvt. Ltd.	Catering Services & House Keeping Services	1,59,446/-	39078/-	198524/-
2	M/s. Nirvana Consultancy Services.	Dry Cleaning services	75,995/-	42767/-	118762/-
3	Shivam Enterprises	Manpower Supply Services	1,98,585/-	90915/-	289500/-
4	Tata Blue Scope	Constrution related services	344680/-	392834/-	737514/-
5	L & T Technology Services	Consulting Services	19,94,175/-	64364/-	2058539/-
6	Jacob Engineering India P. Ltd	Consulting Services	37,16,398/-	2604856/-	6321254/-
7	Xpertz Advertising & Event Promotions	Event Management Services	70,052/-	0	70052/-
	Total				9794145/-

3. The Cenvat Credit availed on tax paid on the Cleaning, Cooking, Maintenance and Security Services of the guest house provided by M/s. Anin Consultancy Services Pvt. Ltd and M/s. Nirvana Consultancy Services were adding upto Rs. 3,17,286/-. It was observed that the said services, used at their guest house, were primarily related to personal usage and not used directly or indirectly in or in relation to the manufacture of final products and clearance of final products up to the place of removal and therefore, did not qualify as input services in terms of



Rule 2(l) of the Cenvat Credit Rules, 2004 and the service of outdoor catering was specifically excluded from the purview of input services.

4. It was observed that the assessee had taken Cenvat Credit from M/s. Shivam Enterprise for man power supply services in the AZO area for sludge removal amounting to Rs. 2.89,500/- and was observed that the said services did not directly or indirectly fall in or in relation to the manufacture of final products and clearance of final products up to the place of removal and therefore, did not qualify as input services in terms of Rule 2(l) of the Cenvat Credit Rules, 2004.

5. It was further observed that the assessee had purchased the parts of steel structures from Tata Bluescope Steel Ltd. for construction activity and also availed services in relation to erection work. The said services availed by the assessee for setting up of the unit/plant is not covered under Input Services as defined under the Cenvat Credit Rules, 2004. Hence, the same is required to be recovered from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 along with appropriate interest and penalty. The Assessee paid service tax of Rs. 3,44,680/- and interest of Rs.48852/- vide challan No. 00024 dated 13.12.2017 in respect of the services availed for the period 2016-17. However, remaining amount for the period from April 17 to June 17 has not been paid.

6. As regards the CENVAT credit availed of tax paid on the L&T Technology Services (100% subsidiary of Larsen and Toubro Ltd.) (Rs. 2058539) and Jacob Engineering India Pvt. Ltd (Rs. 6321254), it was observed that the assessee had availed & utilised Cenvat credit amounting to Rs. 8379793/- on the services viz. provide engineering services for "Project Globe" in a Phase wise manner, the 2 phases being (1) Engineering and (2) Construction Management. L&T would provide all the design, drawings and layout for the proposed "Project Globe" and assist the assessee in the construction management and to provide support L&T Technology Services (100% subsidiary of Larsen and Toubro Ltd.) and from Jacob Engineering India Pvt. Ltd for Residual Engineering, Procurement and Construction Management Services for 'Project Globe', The assessee entered into an agreement with Jacobs on 11.05.2016, wherein the Scope of Work is provided under Clause 2 to the said agreement. The broad scope of services to be performed by Jacobs *inter alia* is as under:

i. Civil and Architecture including Pre Engineered Building

ii. Mechanical including HVAC, Fire fighting

iii. Piping

iv. Electrical, I&C and BMS for Utilities

v. Construction management includes the following:

o Organisation

o Safety Management

o Support from Home Office for Construction & Safety

o Adherence to project timelines

o Quality management and minimizing rework



The above said construction or execution of services are not covered under the definition of input services in terms of Rule 2(l) of Cenvat Credit Rules 2004.

7. It was further observed that the assessee had availed and utilized the services of event management from Xpertz Advertising & Event Promotions for an inauguration ceremony amounting to Rs. 70,052/- in respect of expansion of building. Various lenders and business associates of the assessee were invited for the inauguration ceremony to acknowledge the expansion of the plant. The said services were not engaged directly or indirectly in or in relation to manufacture of final products as per Rule 2(l) of Cenvat Credit Rules 2004.

8. Rule 2(l) of the CENVAT Credit Rules, 2004, is reproduced below for reference:

[l) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

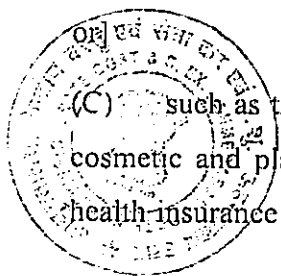
[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person;

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home



Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

[*Explanation.* - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

9. A statement of Shri Mudit Agarwal, Commercial Manager & Authorised Signatory of M/s. Colgate Palmolive India Limited was recorded under Section 14 of Central Excise Act, 1944 on 13.12.2018. During recording of his statement they stated that their stand remained the same on the reply submitted on 01.03.2018. Further, he submitted the details for the period April 2017 to June 2017 in respect of Cenvat Credit availed to the tune of Rs. 32,34,814/- on non specified input services, as objected by CERA.

In the said submissions vide their letter dated 01.03.2018 they interalia contended that:-

10. **NIRVANA CONSULTANCY SERVICES**

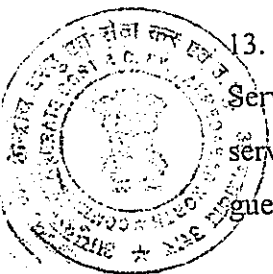
In respect of dry cleaning services, the assessee submits that they have entered into agreement dated 11.04.2015 with Nirvana Consultancy Services (NCS), whereby it is agreed upon by the parties that NCS will provide laundry related services on a non-exclusive basis to the assessee. The scope of the services is envisaged in Annexure A to the said agreement, which provide that laundry services will be provided for washing and ironing of employee uniforms, linens, etc. at a regular interval of 24 hours.

11. The assessee submitted that, they being a manufacturer of an oral hygiene product, has to maintain hygienic conditions in the factory and outside so that no contamination enters the factory premises and the manufacturing process is not disrupted. It is submitted that the entire manufacturing occurs in sterile and hygienic condition which needs to be maintained and in the absence of clean uniforms, the purpose would be defeated. Thus, the washing, ironing of the uniforms, linen, etc. is in relation to manufacture of the final product, not for personal use. It is therefore contended by them that the washing/ dry cleaning services are used by the manufacturer, directly or indirectly, in or in relation to the manufacture and clearance of final products and are not used primarily for personal use or consumption of an employee.

12. Even if the contention of the assessee that the laundry services are used for the staff of the factory where in sterile and hygienic conditions are to be maintained, it is too farfetched to say that the said services are used in relation to manufacture of the final product. Therefore the contention of the assessee appeared to be unacceptable and they are not entitled to avail Cenvat credit on the said services as they are not input services.

**ANIN CONSULTANCY SERVICES**

13. The assessee contended that in respect of the services provided by ANIN Consultancy Services ("ACS"), the Assistant Commissioner has erroneously considered as "construction services", whereas the services provided are for cleaning, maintaining, cooking, and security of guest house i.e. overall maintenance of a guest house.



14. They further contended that they entered into an agreement dated 01.04.2016 with ANIN Consultancy Services ("ACS"), which carries on business of providing manifold professional facilities management/ housekeeping/ cooks/ bearers & maintenance and related services. The Assessee has agreed to avail professional guest house management services (including providing cook-cum care taker and housekeeping manpower, etc.). It is also explained that they are liable to provide accommodation to those officials who visit the factory for official business and has thus maintained a guest house at Ahmedabad which is about 40 Kms. from their factory at Sanand, for the same.

15. They stated that the said guest house is available for the employees/ staff of the company when they travel out of the company to the factory premises at Sanand for official purposes. It is one of the essential services provided by them to its employees who travel to the said factory. The said guest house is not used for accommodation for personal use or consumption of the employee on its own. They submitted that providing and maintenance of guest house and its services are directly or indirectly, in or in relation to the manufacture of goods.

16. As discussed in the foregoing paras, the services used for the maintenance of the company's guest house, that to 40 Kms. away from their factory. Further, ongoing through the invoices, it was observed that the invoices raised mostly in nature of Grocery/ vegetable Purchase, Cooking expenses & lunch and food expenses, purchase of inventory, food & other article purchase etc., by no stretch of imagination can be considered to be the services directly or indirectly used in or in relation to the manufacture of goods. Therefore, it appeared that they are not entitled to Cenvat credit on the said service.

#### TATA BLUESCOPE STEEL LTD.-

17. The Assessee had purchased parts of steel structures from Tata Bluescope Steel Ltd. for construction activity and also availed services in relation to erection work. A purchase Order dated 06.11.2015 was placed.

#### L&T TECHNOLOGY SERVICES-

18. L&T Technology Services (100% subsidiary of Larsen and Toubro Ltd.) was engaged by the Assessee to carry out the engineering and CAPEX management for an on-going "Project Globe", existing Oral Care facility at Sanand, Gujarat. As per Assessee's requirement, existing area of "Project Atlas" was required to be modified to facilitate installation of additional equipment. Therefore, on 04/09.03.2015, L&T Technology Services ("L&T") provided the Assessee, a techno-commercial proposal for modification activity in existing facility at Sanand, Project Altas (Proposal no. 00009535\_046) (hereinafter referred to as "proposal"). Vide the said proposal, it was proposed that L&T will provide engineering services for modification, CAPEX Management and Construction Management Support for modifications in "Project Atlas", in a phase wise manner. It was stated that to facilitate modifications in the existing utility building and to facilitate installation of new equipment, some makeshift arrangements limited to piping network is envisaged.

19. L&T proposed that it will provide engineering services for "Project Globe" in a Phase wise manner, the 2 phases being (1) Engineering and (2) Construction Management. L&T would provide all the design, drawings and layout for the proposed "Project Globe" and assist the Assessee in the construction management and provide support. Copy of the proposal dated 04/09.03.2015 with L&T was submitted by the assessee.

**JACOBS ENGINEERING INDIA PRIVATE LIMITED-**

20. In relation to the factory at Sanand, the Assessee availed Residual Engineering, Procurement and Construction Management Services for 'Project Globe', from Jacobs Engineering India Private Limited ("Jacobs/JEIPL"). The Assessee entered into an agreement with Jacobs on 11.05.2016, wherein the Scope of Work is provided under Clause 2 to the said agreement. The broad scope of services to be performed by Jacobs *inter alia* as under:

- i. Civil and Architecture including Pre Engineered Building
- ii. Mechanical including HVAC, Fire fighting
- iii.- Piping
- iv.- Electrical, I&C and BMS for Utilities
- v.- Construction management includes the following:
  - o Organisation
  - o Safety Management
  - o Support from Home Office for Construction & Safety
  - o Adherence to project timelines
  - o Quality management and minimizing rework

21. The main intent of the said agreement is to procure consultancy services in relation to the Project Globe. Vide the roles and responsibilities of the Jacobs project manager, as enumerated in the Appendix D to the agreement under point 1.0., it is clear that the scope of the project relates to overall planning, scheduling and controlling of the project, coordination, status report, etc. in relation to Project Globe. There is no actual construction service provided by Jacobs.

22. As discussed in the foregoing paras, the Definition of "input Services" under Rule 2(l) of the Cenvat Credit Rules, 2004 specifically excludes service portion in the execution of a works contract and construction services in following terms:

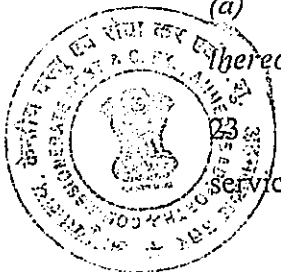
*"[but excludes], -*

*[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -*

*(a) construction or execution of works contract of a building or a civil structure or a part*

*hereof; or"*

From the tone and tenure of the exclusion clause, wherein the expression used is 'those services, in so far as they are used for, construction or', it is very clear that not only works





*contract service or construction services* is excluded from the benefit of Cenvat credit but any ancillary services related to *works contract service or construction services* also get ousted from the benefit.

24. It is not out of place to state that construction does not only prescribe bringing up of the building or structure. If this sense was applied it would be only masonry work. Construction comprises of all ancillary activities/services including but not restricted to designing/drawing plans, structural engineering, supervision over the contractors, etc.

The word construction is defined in following terms by the business dictionary;

*"1. General: Clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, or other types of real property such as bridges, dams, roads." (http://www.businessdictionary.com/definition/construction.html).*

25. In view of the foregoing it is apparent that the services provided by Tata Blue scope Pvt Ltd, L& T Technology services Pvt Ltd, Jacob Engineering Pvt Ltd are construction services which are specifically excluded from the scope of benefit of Cenvat Credit in terms of the definition of input services under Rule 2(1) of the Cenvat Credit Rules, 2004, as discussed supra.

#### XPERTZ Advertising, Events & Promotions-

26. Since the Assessee had expanded the unit, it organised an inauguration ceremony in respect of expansion of building. Various lenders and business associates of the Assessee were invited for the inauguration ceremony to acknowledge the expansion of the plant. An event management company was appointed for the same. Service tax was paid by the Assessee to the Event management company for the services received. The said event was organised for advertising and sales promotion of the final product and for growing business. Thus, the said services are not engaged directly or indirectly in or in relation to manufacture of the final products.

27. It also appeared that they consciously availed and utilized Cenvat credit of the tax paid on the services which they had reason to believe that they were not input services for them. Moreover in the present regime of liberalization, self-assessment and filing of ER - 1 returns online, no documents whatsoever are submitted by the assessee to the department and therefore, the department would come to know about such wrong availment of Cenvat credit only during audit or preventive/other checks. Therefore the Government in its wisdom has incorporated the provisions of Rule 9 of the Cenvat Credit Rules, 2004 to cast upon the burden of proof of Admissibility of Cenvat credit on the manufacturer or output service provider taking such credit. It appeared that all this information has been concealed from the department deliberately, consciously and purposefully to evade payment of duty by utilizing wrongly availed Cenvat credit. Therefore, in this case all essential ingredients exist to invoke the extended period under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 to demand the Cenvat credit wrongly availed.

Further, it appeared that the assessee had rendered themselves liable to penalty in terms of the provisions of Rule 15 (2) of the CENVAT Credit Rules, 2004 read with clause (c) of sub-

section (1) of section 11AC of the Excise Act for the above said contravention and suppression of material facts from the department with intent to evade payment of duty.

Interest is also liable to be charged and recovered from them under the provisions of Rule 14 of the CENVAT Credit rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

29. M/s. Colgate Palmolive India Ltd., SM-02, GIDC Industrial Estate, Near BOL Village, Sanand, Ahmedabad - 382170 are hereby called upon to show cause to the Additional/ Joint Commissioner of Central GST, Ahmedabad North vide Show Cause Notice No.V.33/15-02/OA/2019 dated 09.01.2020 Ahmedabad as to why;

(i) Cenvat credit amounting to Rs.97,94,145/- (Rupees Ninty Seven Lacs, ninty Four Thousand and One Hundred Forty Five only) wrongly availed by them on ineligible services should not be disallowed and recovered from them under the Provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 and why Cenvat Credit reversed and paid of Rs. 3,44,680/- and interest of Rs.48852/- should not be appropriated against the demand.

(ii) Interest at the prescribed rate should not be charged and recovered from them under the Provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with provision of Section 11AA of the Central Excise Act, 1944;

(iii) Penalty under the Provisions of Rule 15 (2) of the CENVAT Credit Rules, 2004 read with provision of Section 11AC(1)(c) of the Central Excise Act, 1944 should not be imposed upon them.

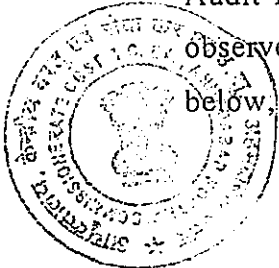
30. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendments of the Finance Act, 1994 have been saved vide Section 174(2) of the CGST Act, 2017 and therefore, the provisions of the said repealed/amended Acts and Rules made there under are enforced for the purpose of demand of duty, interest etc and imposition of penalty under this section.

**Defence Reply:**

31. Vide letter dated 4<sup>th</sup> January, 2021 the assessee submitted that –

They discharged their Central Excise/Service Tax liability as applicable in accordance with law. Further, in the ordinary course of business, they also procured input/input services required for manufacture and availed Cenvat Credit of eligible input/input services as per the provisions of Cenvat Credit Rules, 2004.

32. The assessee stated that during the course of audit of their records by the erstwhile Audit-II, Ahmedabad Commissionerate for the period from 2013 to 2016, it was inter alia observed that they had wrongly availed Cenvat Credit on input services as detailed below, being not eligible in terms of Rule 2(1) of the Cenvat Credit Rules.

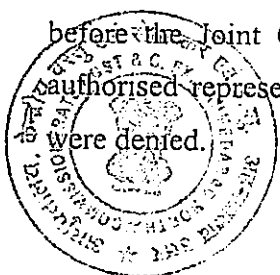


Sr. No.	Name of Service provider	Description of service	Cenvat Credit availed./Rs.
01	M/s.Amin Consultancy Services Pvt.Ltd	Catering Services & House Keeping Services	1,39,656/-
02	M/s.Nirvana Consultancy Services & M/s.Fabricare Laundromats Inc	Dry Cleaning Services	69,847/-
03	M/s.Kitchen Solutions.Com	Interior Design Service for Canteen	15,450/-
04	M/s.Siddhi Construction	Site Clearance, Site Grading & Excavation	75,57,073/-
05	M/s.Tata Consulting Engineers	Construction Supervision, Project Management, Detailed Engineering, Inspection and Expediting (for setting up of Unit at Sanand)	82,91,221/-
	TOTAL		1,60,73,247/-

33. The assessee stated that the said audit objections culminated into a Final Audit Report No.1178/2017-18 dated 02.08.2017 issued by the Assistant Commissioner, Circle-VI, Central Tax Audit, Ahmedabad. Vide letter F.No.AR-III/Div-III/CERA-HM-8/2017-18 dated 18.10.2017, the Superintendent, CGST, Range V, Division-III (Sanand), Ahmedabad North, communicated to them that during the test check of records for the period from 2014-15 to 2016-17 it was observed from Cenvat Credit Pt.II Account (Input Services) that the noticee has availed Cenvat Credit during 2016-17 on input services which are related to construction activity and the same are not specified in the Cenvat Credit Rules.

34. The assessee further stated that during internal audit of EA-2000, the Department already objected for the said credit upto March 2016 and CERA audit has further quantified similar observations in respect of such service providers for the year 2016-17. Accordingly, they were requested to pay for alleged ineligible Cenvat Credit availed of Rs.64,89,279/- in respect of construction services and Rs.70,051/- in respect of event management services along with interest and penalty.

35. The assessee stated that a pre-show cause notice consultation was held on 05.01.2018 before the Joint Commissioner, Central Tax Audit, Ahmedabad which was attended by the authorised representatives of the noticee wherein each of allegations made in the audit report were denied.



36. The assessee stated that vide letter dated 01.03.2018, they replied to the letter F.No.AR-III/Div-III/CERA-HM-8/2017-18 dated 18.10.2017 inter alia denying the allegations for ineligible input services and also informing that a credit of Rs.3,44,680/- availed in respect of invoice raised by M/s.Tata Bluescope Steel Ltd was reversed and paid along with interest in December-2017.

37. They stated that subsequently, a show cause notice F.No.VI/1(d)CTA/06/Circle-VI/Colgate SCN/2017-18 dated 14.02.2018 was issued to the noticee by the Assistant Commissioner (Audit), Circle VI, CGST Audit, Ahmedabad calling upon them as to why Cenvat Credit amounting to Rs.1,60,73,247/- wrongly availed by them on ineligible input services for the period from 2013 to March 2016 should not be disallowed and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest and penalty.

38. The assessee stated that the said SCN was adjudicated vide OIO No.01/ADC/2019-MSD dated 29.04.2019 confirming the demand along with interest and imposing penalty of Rs.1,60,73,247/- for the alleged wrongful availment of Credit. Aggrieved with the said order dated 29.04.2019, they preferred an appeal before the Commissioner(A), CGST & Central Excise, Ahmedabad which was decided vide OIA No.AHM-EXCUS-002-APP-015-2020-21 dated 13.07.2020. Vide the said order the Commissioner(A) has allowed the credit availed by them in respect of Nirvana Consultancy Services & M/s.FabriCare Laundromats Inc.

39. They stated that the the Department further sought details of Cenvat Credit availed by them during the period from April-2017 to June 2017 which was duly provided by them. Thereafter, a pre-consultation was held on 18.12.2019 which was attended by their authorised representatives who reiterated the submissions made in the written reply. Subsequently, show cause notice has been issued to the noticee denying Cenvat Credit availed during the period from 2016-17 and April-June 2017 being ineligible in terms of Rule 2(1) of the Cenvat Credit Rules, 2004 to the tune of Rs.97,94,145/- .

40. They denied each and every allegation made in the show cause notice. The assessee stated that the Cenvat Credit on disputed input services has been rightly availed by them. They referred to the definition of the term "Input Service" under Rule 2(1) of the Cenvat Credit Rules, 2004. They explained the details of each service providers, utilization of services thereof as their input services which are reproduced below:-

Amin Consultancy Services.

41. The assessee stated that they have a guest house at Ahmedabad, which is around 40 kms away from the factory at Sanand. The factory at Sanand is situated in an Industrial Estate area where residential premises are not available. The said guest house is situated in Ahmedabad, which is the nearest area where a person can reside.

42. They had entered into a contract with Amin Consultancy Services which carries on business of providing manifold professional facilities management/housekeeping /cooks/bearers

& maintenance and related services. They have agreed to avail professional guest house management services (including providing cook cum caretaker and housekeeping manpower etc). They engaged the services of Amin Consultancy Service for the upkeep of the Company owned guest house. The Scope of Work is as provided under Annexure A to the agreement and inter alia provides that ACS will be carrying out overall maintenance and management of the guest house including cleaning, cooking and caretaking, security, laundry etc.

43. They stated that the Scope of Work inter alia includes smooth running of the guest house, maintaining a cook plus caretaker, cleaning and upkeep of the premises, furniture, utensils etc, cleaning of floors and maintenance of toilets, collection and disposal of waste material, pest control, security, consumable and supplies etc. Thus, it can be seen that the entire maintenance of guest house has been handed over to Amin Consultancy Service for a consideration who raises invoices on the noticee for the services provided and charges Service Tax for the same.

44. The assessee stated that they are liable to provide accommodation to those officials and employees who visit the factory for official business and have thus maintained a guest house for the same. The said guest house is exclusively available for the employees of the company when they travel out of the company to factory premises at Sanand for official premises. They stated that the said guest house is not used for accommodation for personal use or consumption of the employee; however, is essentially provided for the employees official travel.

45. The assessee stated that the SCN has alleged the services used at the guest house were primarily related to personal usage of the employees and therefore, covered under the exceptions of Rule 2(1) of the Cenvat Credit Rules. Further, the services of outdoor catering were also specifically removed from purview of input services. They submitted that Rule 2(1)( C) of the Cenvat Credit Rules provides that those services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee. As per the said definition, it is clear that Cenvat Credit on input services such as outdoor catering, beauty treatment etc. is not available when they are used primarily for personal use and consumption of an employee. Therefore, it is clear that the restriction on availment of credit is only when the services are used by an employee for his personal purposes. They submitted that the services at the guest house are used by the employees when they travel for official purposes. It is not the case of the Department that the company allows the officials to stay in the guest house along with their families in which case it would be considered as personal use. In the present case, the credit is denied merely on the ground that the good consumed by the employee at the guest house when visiting the factory for official purposes becomes personal use and consumption of the employee which is against the intent of

the legislature.



46. The assessee referred to the decision of the Hon'ble Bombay High Court in the case of ACG Associated Capsules Pvt.Ltd 2019(20) GSTL 346(Bom) wherein the Hon'ble High court stated that-

“Even in relation to a guest house which may not have been situated close to the manufacturing unit of the assessee, if it is pointed out that the use there of was not for the personal use or consumption of the employees, exclusion clause in the definition of the input service, may not apply. In the circumstances, while the Tribunal has already remanded the issue for fresh consideration, we do not interfere with the remand order. However, the tests laid down by the Tribunal in the impugned judgment, would not apply. In the light of the observations made above, it would be open for the Assessee to attempt to persuade the Assessing Officer that the guest houses in question were not used for the personal use or consumption of the employees”.

47. Therefore, they stated that the credit availed by them in respect of the invoices raised by M/s.Amin Consultancy Services is eligible under Rule 2(l) of the Cenvat Credit Rules, 2004.

Nirvana Consultancy Services:

48. The assessee stated that they entered into an agreement dated 11.04.2015 with Nirvana Consultancy Services whereby it was agreed upon between them and Nirvana Consultancy Services, that NCS will provide laundry related services on a non-exclusive basis to the assessee. The scope of services which was envisaged in Annexure A to the said agreement, provides that laundry services will be provided for washing and ironing of employee uniforms, lines, etc at regular interval of 24 hours. The Annexure B to the agreement states the amounts/charges for the laundry, apron, jeans, T-shirts, etc, laundry charges. The service provider raises invoices on the assessee for the services provided and charges Service Tax for the same.

49. The assessee submitted that they being a manufacturer of an oral hygiene product, has to maintain hygienic conditions in the factory premises and outside so that no contamination enters the factory premises and the manufacturing process is not disrupted. They submitted that the entire manufacturing process occurs in sterile and hygienic condition which needs to be maintained and in the absence of clean uniforms, the purpose would be defeated. Thus, washing, ironing of the uniforms, linen, etc. is in relation to manufacture of the final product and not for personal use.

50. The assessee stated that the scope of work specifically states that the services to be provided are washing and ironing of employee uniforms i.e. T-Shirts, Jeans and Aprons. The said scope of work also mentions the process flow, wherein the employees are required to put the used uniform in the washing bin and the service team of the service provider will collect it from the bin and the security guard counts the uniforms and makes an entry in a register maintained at the factory premises. The said uniforms are taken by the vendor and are washed cleaned and returned within 24 hours, unless the uniforms are kept for stain which will take more than 24 hours for cleaning, in which case, the reason has to be intimated to the assessee in challan. The process



continues and the stock count is taken on monthly basis by both the assessee and the service provider.

51. The assessee stated that by this entire process, it is clear that the employees are required to wear the uniforms as provided by them and are required to change them and put them in the bin every day for getting them cleaned. This is a standard protocol which is required in order to maintain the hygiene levels within the factory premises, where the manufacture of goods takes place. The allegation leveled in the show cause that the services were used at the guest house were primarily related to personal use is not correct.

52. The assessee stated that the dry cleaning and laundry services availed from the service provider are for dry cleaning of the uniform of the employees in order to maintain the standards of hygiene as prescribed by the BIS. Therefore, the said dry cleaning services are necessary in order to ensure standards of hygiene and accordingly the said services as alleged can not be said to be for personal use or consumption of employees and the said services are used in or in relation to manufacture of their final product. They relied the following case laws:-

- (i) CCE Vs Zensar Technologies Ltd (2016(42) STR 570 (Tri-Mumbai).
- (ii) Hindustan Coca-Cola Beverages Pvt.Ltd Vs CCE, Nashik - 2015(38)STR-129 (Tri-Mumbai).

53. The assessee stated that in view of the above facts, it is clear that only those services that are excluded from the ambit of the definition of input services which are primarily used for the personal use and consumption of the employees. Further vide OIA dated 13.07.2020, in their own case, the Commissioner(A) has allowed the Cenvat Credit availed by them in respect of Nirvana Consultancy. Therefore, they requested that the Credit availed by them in respect of the invoices raised by the above service provider is eligible under Rule 2(l) of the Cenvat Credit Rules.

#### SHIVAM ENTERPRISES

54. The assessee stated that they have appointed Shivam Enterprises which provides manpower for sludge removal in the AZO area. They had not entered into a contract with Shivam for the provision of such manpower supply services and the said assignment was on work to work basis. For completion of the assignment, Shivam raised invoices on the assessee for the services provided and charged Service Tax on the same.

55. They stated that the Cenvat Credit is being denied to them on the ground that such services do not directly or indirectly fall in or in relation to the manufacture of final products and clearance of final products upto the place of removal and therefore do not qualify as input services in terms of Rule 2(l) of the Rules. They submitted that except for merely making a bald statement that the said services do not directly or indirectly fall in or in relation to the manufacture of final products, there is no reason or evidence given in the show cause notice to disallow the said credit. They submitted that it is settled position in law that while issuing of the show cause notice it is fundamental to mention the reason for the disallowance to enable the

assessee to provide its response to the allegation. A mere bald allegation is against the principles of natural justice. Thus on the ground itself the demand is liable to be set aside.

56. The assessee submitted that the sludge removal is an essential activity to be carried by the assessee in the ordinary course of business and manufacturing activity undertaken by it. Therefore, the input tax credit availed by them in respect of the invoices raised by Shivam Enterprises is eligible under Rule 2(l) of the Cenvat Credit Rules.

#### TATA BLUESCOPE STEEL LTD

57. The assessee raised a purchase order with Tata Bluescope Steel Ltd to supply parts of Steel Structures. Accordingly, Tata Bluescope Steel Ltd supplied the steel structures and provided the services for erection work as per the agreed terms. In the invoice raised by the Tata Bluescope Steel Ltd, for the erection works carried out a service tax of Rs.3,44,680/- was charged by them in relation to which the credit was availed by them.

58. They stated that they reversed the Cenvat Credit availed in respect of Tata Bluescope Steel amounting to Rs.3,44,680/- along with interest and claimed that no penalty be levied since the said amount is paid prior to issuance of show cause notice.

59. They stated that vide sub-clause(A) of the definition of input services, the service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act, 1994 (hereinafter referred as specified services) in so far as they are used for –

- (a) Construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
- Are excluded from the ambit of “input services”.

60. They submitted that services provided by Tata Bluescope for erection of the steel structures supplied is not for construction of a building or civil structure and therefore the credit has been rightly availed by them. They placed reliance on the decision in the case of CCE & ST, Raipur Vs Vimla Infrastructure India Pvt.Ltd reported in 2018(13)GSTL 57 (Chhatisgarh). Therefore, they requested that the credit availed by them in respect of invoices by M/s.Tata Bluescope may be allowed.

#### L&T TECHNOLOGY SERVICES AND JACOBS ENGINEERING INDIA PVT.LTD.

61. The assessee stated that L&T Technology Services was engaged by them to carry out engineering and CAPEX management for an on-going “Project Globe”, existing Oral Care facility at Sanand, Gujarat. As per the assessee’s requirement, existing area of the project was required to be modified to facilitate installation of additional equipment. A techno-commercial proposal was provided by L&T activity for modification in existing facility at Sanand. Vide the





said proposal, it was proposed that L&T will provide engineering services for modification, CAPEX Management and Construction Management Support for modification in "Project Globe", in a phase wise manner. It was stated that to facilitate modifications in the existing utility building and to facilitate installation of new equipment, some makeshift arrangement limited to piping network is envisaged.

62. The assessee stated that L&T proposed that it will provide engineering services for "Project Globe" in a Phase wise manner, the 2 phases being i) Engineering and ii) Construction Management, L&T would provide all designs, drawings and layout for the proposed "Project Globe" and assist them in construction management and provide support.

63. The assessee submitted that the main intent of the said agreement was to procure consultancy services in relation to Project Globe. The agreement also states "Detailed design services for Project Globe". The assessee also engaged Jacobs Engineering India Pvt.Ltd for Residual Engineering, Procurement and Construction Management Services for Project Globe. They entered into an agreement with JEIPL on 11.05.2016. The scope of work was provided under Clause 2 to the said agreement. The scope of work was provided under Clause 2 to the said agreement. The broad scope of services to be performed by JEIPL inter alia is as under:-

- a) Civil and architecture including pre-engineered building
- b) Mechanical including HVAC, fire fighting
- c) Piping
- d) Electrical, I&C and BMS for utilities
- e) Construction Management
- i) Organisation
- ii) Safety Management
- iii) Support from home office for construction and safety
- iv) Adherence to project timelines
- v) Quality management and minimizing work.

64. The assessee stated that the main intent of the said agreement with JEIPL was to procure consultancy services in relation to Project Globe. Even vide the major responsibilities of JEIPL project manager, as enumerated in the Appendix D to the agreement under point 1.0, it is clear that the scope of the project relates to overall planning, scheduling and controlling of the project, coordination, status report etc in relation to "Project Globe". There is no actual construction service provided by JEIPL. They stated that it was alleged in the SCN that the said services availed by them from L&T and JEIPL are construction or execution of services which are not covered under the definition of the term input services as per Rule 2(l) of the Cenvat Credit Rules.

The assessee further stated that it is seen vide sub-clause(A) of the said definition of input services that the service portion in the execution of a works contract and construction services



including service listed under clause (b) of Section 66E of the Finance Act (specified services) in so far as they are used for-

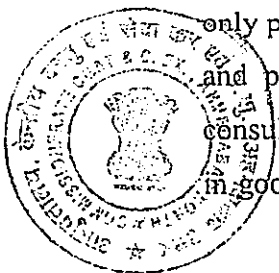
- (a) Construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
- are excluded from the ambit of "input services"

66. The assessee stated that to fall under the exclusion, the service have to be the service portion in the execution of a works contract and construction services in so far as they are used for construction or execution of works contract of a building or a civil structure for support of capital goods. Thus, one of the main ingredient to fall under the exclusion is the existence of a works contract.

67. The assessee stated that "Works Contract" is defined under Section 65(105) (zzzza) of the Finance, as "Works contract" means a contract wherein,-

- (i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) Such contract is for the purpose of carrying out,-
  - a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electaronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
  - b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - c) Construction of a new residential complex or a part thereof; or
  - d) Completion and finishing services, repair, alteration, restoration of, or similar services, in relation to (b) and (c) or (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

68. The assessee stated that in the present case, on perusal of the entire scope of work in the agreement entered into by them with L&T and JEIPL, it is clear that L&T and JEIPL has not performed any construction nor has it sold any goods under the contract. Nowhere in the scope of work of both the agreements it is mentioned that construction has to be done/executed by L&T and JEIPL, or that goods in relation to construction activity are to be sold. The said agreement only provide for the provision of consultancy services and submitting of layouts, design, drawing and plans etc. It only states about providing assistance in planning, scheduling and giving consultancy and advice on the project undertaken by them. Thus, there is no transfer of property in goods involved in the execution of such contract nor there is any execution of work done by



them in relation to erection, commissioning or installation of plant, machinery, equipment or structures.

69. The assessee stated that the said agreement can not be categorized under "Works contract". At best, it could be said that L&T and JEIPL is providing consulting engineering services or management consultancy services since they are providing consulting and advice as to how the entire project should be carried out. They stated that since the agreement entered into by them with L&T and JEIPL are not works contract, the main ingredient to fall under the exclusion of sub-clause(A) is absent and the said services provided by L&T and JEIPL do not fall under the exclusion of clause of the definition of input services. The assessee said that the services provided by L&T and JEIPL are correctly considered as input services in as much as they are used in or in relation to the manufacture of final goods and hence CENVAT credit of the service is correctly availed by them. Therefore, the Cenvat Credit availed by them are due and proper and being eligible input services under Rule 2(l) of the Cenvat Credit Rules.

#### XPERTZ ADVERTISING, EVENTS & PROMOTION

70. The assessee stated that on the inauguration ceremony of the expansion of the building they had organized an event wherein various lenders and business associates of them were invited to acknowledge the expansion of the Plant. XPERTZ Advertising, Event & Promotions was engaged by them to plan and organize the said inauguration ceremony. The SCN issued, the Cenvat Credit of Service Tax paid on the said services are being denied on the ground that such services are do not directly or indirectly fall in or in relation to the manufacture of final products and clearance of final products upto the place of removal and therefore, do not qualify as input services in terms of Rule 2(l) of the Rules.

71. The assessee submitted that except for merely making a bald statement that the said services do not directly or indirectly fall in or in relation to the manufacture of final products. there is no reason or evidence given in the SCN to disallow the said credit. They submitted that it is settled position in law that while issuing the SCN it is fundamental to mention the reason for the disallowance to enable them to provide its response to the allegation. A mere bald allegation is against the principles of natural justice. Thus, on the said ground itself the demand is liable to be set aside.

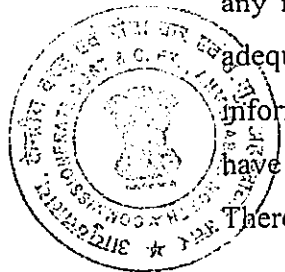
72. The assessee submitted that they organized the inauguration ceremony for the purpose of sales promotion for various lenders and their business associates which is not specifically excluded from the definition of input and input services and accordingly credit in respect of the said services can not be merely denied on conjectures and surmises. They referred to the following case laws-

- (i) Castrol India Ltd Vs Commissioner of Central Excise, Vapi 2013 (291) ELT 469 (Tri-Ahmd)
- (ii) Mundra International Container Terminal (P) Ltd Vs Commissioner of Central Excise, Rajkot (2012) 37 STR 264 (Ahmedabad-CESTAT).

73. The assessee stated that in the present case, the said event management services are in relation to their business promotion and hence is directly or indirectly in relation to the manufacture of their final products. They stated that the entire demand in the show cause notice is barred by limitation. The assessee stated that in any event the SCN to the extent that it proposes to confirm demand for the period beyond normal period of limitation is time barred and deserves to be set aside. They also submitted that as explained in the facts above, the SCN under reply is actually a follow on SCN issued post the audit conducted in the year 2017 of the records for the period from 2013 to March 2017. Therefore, the question of invocation of extended period of limitation does not arise in the first place. The assessee stated that the department was aware of all the facts while issuance of the earlier show cause notice and therefore the present SCN, without prejudice to their submission on merits, could only have been issued within the normal period of limitation. They submitted that it is a settled position in law that, when all the facts are in knowledge of the department, while issuing the subsequent SCN on same/similar facts, no suppression of facts can be alleged on the part of the assessee. They relied the case of Nizam Sugar Factory Vs CCE, AP (2006(197)ELT 465 (SC). Therefore, they stated that the entire demand in the show cause notice is liable to be set aside being barred by limitation. They also stated that the SCN purports to invoke the extended period of limitation on the basis that they have deliberately, consciously and purposefully evaded payment of duty by utilizing wrongly availed Cenvat Credit. They referred to Section 11A(4) of the Central Excise Act. They stated that unless ingredients mentioned in sub-clause(a) to (e) of Section 11(4), extended period can not be invoked.

74. The assessee also submitted that in the present case they have neither made any misstatement, suppressed any facts nor did they have any intention to evade payment of tax and hence, the provisions of Section 11A(4) of the Central Excise Act are not imposable. They have also not made any conscious efforts to suppress the facts nor has intended to evade payment of duty. Thus, the invocation of the extended period of limitation is untenable in law. They relied on the case of CCE Vs Chemphar Drugs and Liniments (1989 (40) ELT 276 (SC)), Lubrichem Industries Ltd Vs CCE (1994 (73) ELT 257 (SC)) and Pushpam Pharmaceuticals Co Vs, CCE (1995)78 ELT 401 (SC).

75. The assessee stated it is well settled by the judgment of the Hon'ble Supreme Court in Nestle India Ltd Vs CCE (2009 (235) ELT 577 (SC) that, to invoke the larger period of limitation there should be some positive act other than mere inaction or failure on the part of the assessee or there must be conscious or deliberate withholding of information by the assessee. Stated simply, there must be some positive action in withholding information on the part of the assessee to constitute wilful suppression. The assessee has stated that they have not consciously held back any information with an intent to evade payment of tax, instead, as stated earlier, they have adequately disclosed the information which is statutorily required to be disclosed and no material information or fact has been withheld, much less with the intent to suppress the fact. Further, they have submitted all the information/documents sought by the department from time to time. Therefore, they submitted that there is neither any wilful misstatement, suppression of facts, etc



nor any deliberate intent to evade payment of duty and therefore the extended period of limitation is not invocable in the facts of the present case.

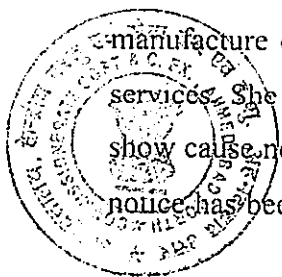
76. The assessee submitted that the penalty under Section 11AC of the Central Excise Act read with Rule 15 of the Cenvat Credit Rules is imposable only in cases where duty is not paid for reasons of fraud, collusion or any wilfull mis-statement or wilful suppression of facts or contravention of any of the provisions of the Act/rules with the intent to evade duty. They explained the Rule 15(2) of the Cenvat Credit Rules, 2004 and stated that a bare perusal of the said Rule 15(2), it is clear that this provision applies where "Cenvat Credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Central Excise Act, or of the rules made thereunder with intent to evade payment of duty which is not the factual position in the instant case. They stated that the demand itself is not sustainable, the consequent penalty under Rule 15(2) read with Section 11AC can not be imposed. In support of their contention, they relied on the case of CCE Vs HMM Ltd 1995(76) ELT 497 (SC) and Coolade Beverages Ltd Vs CCE Meerut 2004 (172) ELT 451 (All).

77. The assessee submitted that the allegation of any fraud, suppression or wilful mis-statement are unsustainable. They submitted that the issue of eligibility of credit is one of interpretation of law and no penalty can be impsed on them. Therefore, no penalty under Section 11AC of the Central Excise Act read with Rule 15 of the Cenvat Credit Rules is imposable on them.

78. The assessee stated that since the duty demand is not sustainable as per the arrangements advanced above, the proposal to demand interest is unsustainable and needs to be set aside. They relied the case of Pratibha Processors Vs Union of India reported at 1996 (88) ELT 12(SC) wherein the Hon'ble Supreme Court had held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either. They submitted that the liability of interest is inseparably linked with the demand confirmed in the impugned SCN. If the demand itself is not sustainable, the question of demanding interest does not arise and therefore, the demand of interest in the impugned SCN is liable to be dropped. Finally, they requested for a personal hearing to further explain their submission.

PERSONAL LHEARING:

79. Personal hearing in this case was fixed on 05.01.2021. Adv, Rinkey Jassuja appeared for virtual hearing. She stated that the entire services have been used in or in relation to the manufacture of goods and therefore, all the said services are covered by the definition of input services. She explained the use of each and every service used in the disputed period for which show cause notice has been issued. Further she stated that earlier for the same subject show cause notice has been issued invoking extended period of limitation. This is not permissible under law.



She also stated that a detailed reply to the notice citing case laws has been sent. Finally she requested for dropping the show cause notice.

DISCUSSION AND FINDINGS:

80. I have carefully gone through the records of the case, reply to the show cause notice as well as submission made during the virtual hearing. The issue to be decided in the present case is whether the show cause notice issued to the assessee for wrong availment of Cenvat Credit on various services availed by them during the period 2016-17 to 2017-18 (upto June 2017) is sustainable or not.

81. I find that the present Show Cause Notice has been issued to the assessee for denying Cenvat Credit to the tune of Rs.97,94,145/- on the ineligible services availed by them for the period from 2016-17 to 2017-18 (upto June 2017) as detailed below:-

Sr. No.	Name of Service Provider	Description of Service	Cenvat Credit Availed During 2016-17 (in Rs.)	Cenvat Credit Availed During 2017-18 (April June-17) (in Rs.)	Total Cenvat Credit availed (in Rs.)
1	M/s. Anin Consultancy Services Pvt. Ltd.	Catering Services & House Keeping Services	1,59,446/-	39078/-	198524/-
2	M/s. Nirvana Consultancy Services.	Dry Cleaning services	75,995/-	42767/-	118762/-
3	Shivam Enterprises	Manpower Supply Services	1,98,585/-	90915/-	289500/-
4	Tata Blue Scope	Construction related services	344680/-	392834/-	737514/-
5	L & T Technology Services	Consulting Services	19,94,175/-	64364/-	2058539/-
6	Jacob Engineering India P. Ltd	Consulting Services	37,16,398/-	2604856/-	6321254/-
7	Xpertz Advertising & Event Promotions	Event Management Services	70,052/-	0	70052/-
	Total				9794145/-

82. In reply to the show cause notice, the assessee relied the Order-in-Appeal No.AHM-EXCUS-002-APP-015-2020-21 dated 26.06.2020/13.07.2020 passed by the Commissioner, CGST (A), Ahmedabad in their own case and stated that Cenvat Credit in respect of M/s.Nirvana Consultancy Services, Fabricare Laundramates Inc and M/s.Kitchen Solutions.com has been allowed by the Commissioner(A). Para 7.2 and 7.3 of the Order-in-Appeal No .AHM -- EXCUS -- 002 -- APP -- 015 -- 2020 -- 21 dated 26.06.2020/13.07.2020 is reproduced below:-

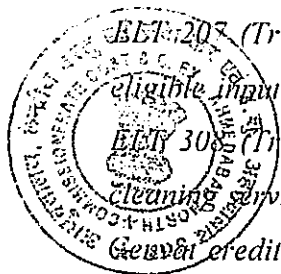


"7.2. The appellant has contested that the dry cleaning and laundry service availed from Nirvana Consultancy and Fabricare Laundramates Inc. is for dry cleaning of the uniform of employees in order to maintain standard hygiene as prescribed by BIS. They have also relied upon judgment of Hon'ble CESTAT, Chennai in case of Fourrts (I) Laboratories Pvt.Ltd 2012(277) ELT 202 (Tri-Chennai). I find that the case law squarely applies to present case and hence I allow Cenvat credit amounting to Rs.69847/- on Dry Cleaning Service availed from the above said firms".

7.3. In respect of M/s.Kitchen Solutions.Com wherein the appellant sought services of a professional interior decorator and designer for designing the kitchen of the canteen at factory. It is argued that maintenance of kitchen canteen is mandatory as per Section 46 of the Factory Act, 1948. In this context, I observe that since it is mandatory for the appellant to provide food for workers in the manufacturing unit as per Factory Act, 1948. Canteen is incidental to or connected with manufacturing process and hence Cenvat Credit on the same are eligible. The decision of Hon'ble CESTAT, West Zone, Mumbai in case of Commissioner, C.EX, Mumbai Vs GTC Ind-2008 (12)STR 468 (Tri-LB) is squarely applicable to the service in question. The relevant part of which is reproduced below:-

*"the above paras of CAS-4 clearly shows that cost of subsidised food is included in the cost of production. We further note that in case of a factory having more than 250 workers under Section 46 of the Factories Act, 1948, it is mandatory on the part of the factories to provide a canteen facility within the factory premises and failure to comply with the provisions of Section 46 attracts prosecution and penalty under Section 92 of the Factories Act, 1948. A service tax on outdoor catering services is paid by the manufacturer for running the canteen, irrespective of the fact that a subsidized food is provided or not. Whether the cost of food is borne by the worker or by the factory, the same will form part of expenditure incurred by the manufacturer and will have a bearing on the cost of production. In view of the same, employment of outdoor canteen for providing catering services has to be considered as an input service relating to the business and Cenvat credit in respect of the same will be admissible. We, therefore, concur with the views of the tribunal expressed in the case of Victor Gaskets India Ltd and Others – 2008(10) STR 369 (Tri-Mumbai). The reference is answered accordingly and the matter is sent back to referral Bench for passing appropriate orders".*

*As observed by the Hon'ble CESTAT, expenses made in respect of the mandatory requirement under Factory Act, 1948, will have bearing on the cost of production and hence I observe that service provided in respect of interior decorator and designing the kitchen of the canteen in factory has to be considered as an input service on which the Cenvat credit is admissible. In another case law cited by the appellant i.e. Commr, C.Ex. Bhavnagar Vs Nirma Ltd 2012 (277) ELT 207 (Tri-Ahd). it was held that interior decorator service used for garden developing is eligible input service. Besides that, the Hon'ble CESTAT in CCE Vs Bajaj Auto Ltd 2011 (272) ELT 308 (Tri-Chennai) had allowed Cenvat on LPG used for providing kitchen service and cleaning service for upkeep of kitchen. Following the judgments of Hon'ble Tribunal, I find that Cenvat credit is available to the appellant on services provided by M/s.Kitchen Solutions.Com. Hence, I allow Cenvat Credit of Rs.15,450/- for interior Design Service for kitchen. "*



83. The Assistant Commissioner (Review), CGST, Ahmedabad North, vide his letter F.No.IV/16-63/OIA/Misc/19-20-RA dated 22.09.2020 has informed that the OIA No.AHM-EXCUS-002-APP-015/2020-21 has been accepted by the Department on low monetary grounds and not accepted the said order on merit. It means that the Department is of the view that the Cenvat Credit used on the aforesaid services are not in accordance with the Rule 2(l) of the Cenvat Credit Rules, 2004 and the Department could not file appeal as the amount involved in these services were less than the monetary limit prescribed by the Government for filing appeal before Commissioner(Appeals). In the present case also, I am not in agreement with the assessee that the Cenvat Credit availed by them in the present case are covered under the definition of Input Services as per Rule 2(l) of Cenvat Credit Rules, 2004 and therefore their submissions are not maintainable.

In this context, would like to quote Section 35R of the Central Excise Act, 1944. Sub-section (1) to (3) of Section 35R is reproduced below:-

*“(1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purpose of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter”.*

*“(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law”*

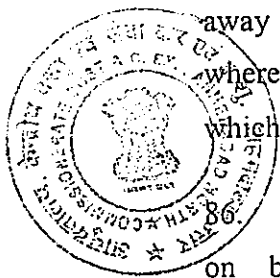
*“(3). Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference”*

84. In reply to the show cause notice, the assessee vide their letter dated 04.01.2021 discussed the consumption of services utilized in each and every services gist of which is produced below:-

Amin Consultancy Services.

85. The noticee stated that they have a guest house at Ahmedabad, which is around 40 kms away from the factory at Sanand. The factory at Sanand is situated in an Industrial Estate area where residential premises are not available. The said guest house is situated in Ahmedabad, which is the nearest area where a person can reside.

The assessee had entered into a contract with Amin Consultancy Services which carries on business of providing manifold professional facilities management/housekeeping





/cooks/bearers & maintenance and related services. They have agreed to avail professional guest house management services (including providing cook cum caretaker and housekeeping manpower etc). They engaged the services of Amin Consultancy Service for the upkeep of the Company owned guest house. The Scope of Work is as provided under Annexure A to the agreement and inter alia provides that ACS will be carrying out overall maintenance and management of the guest house including cleaning, cooking and caretaking, security, laundry etc.

87. They stated that the Scope of Work inter alia includes smooth running of the guest house, maintaining a cook plus caretaker, cleaning and upkeep of the premises, furniture, utensils etc, cleaning of floors and maintenance of toilets, collection and disposal of waste material, pest control, security, consumable and supplies etc. Thus, it can be seen that the entire maintenance of guest house has been handed over to Amin Consultancy Service for a consideration who raises invoices on the noticee for the services provided and charges Service Tax for the same.

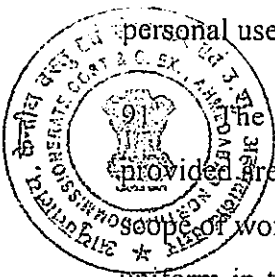
88. They assessee stated that they are liable to provide accommodation to those officials and employees who visit the factory for official business and have thus maintained a guest house for the same. The said guest house is exclusively available for the employees of the company when they travel out of the company to factory premises at Sanand for official premises. They stated that the said guest house is not used for accommodation for personal use or consumption of the employee however is essentially provided for the employees official travel.

Nirvana Consultancy Services:

89. The assessee stated that they entered into an agreement dated 11.04.2015 with Nirvana Consultancy Services whereby it was agreed upon between them and Nirvana Consultancy Services, that NCS will provide laundry related services on a non-exclusive basis to the assessee. The scope of services which was envisaged in Annexure A to the said agreement, provides that laundry services will be provided for washing and ironing of employee uniforms, lines, etc at regular interval of 24 hours. The Annexure B to the agreement states the amounts/charges for the laundry, apron, jeans, T-shirts, etc, laundry charges. The service provider raises invoices on the assessee for the services provided and charges Service Tax for the same.

90. The assessee submitted that they being a manufacturer of an oral hygiene product, has to maintain hygienic conditions in the factory premises and outside so that no contamination enters the factory premises and the manufacturing process is not disrupted. They submitted that the entire manufacturing process occurs in sterile and hygienic condition which needs to be maintained and in the absence of clean uniforms, the purpose would be defeated. Thus, washing, ironing of the uniforms, linen, etc. is in relation to manufacture of the final product and not for personal use.

The assessee stated that the scope of work specifically states that the services to be provided are washing and ironing of employee uniforms i.e. T-Shirts, Jeans and Aprons. The said scope of work also mentions the process flow, wherein the employees are required to put the used uniform in the washing bin and the service team of the service provider will collect it from the



bin and the security guard counts the uniforms and makes an entry in a register maintained at the factory premises. The said uniforms are taken by the vendor and are washed cleaned and returned within 24 hours, unless the uniforms are kept for stain which will take more than 24 hours for cleaning, in which case, the reason has to be intimated to the assessee in challan. The process continues and the stock count is taken on monthly basis by both the assessee and the service provider.

92. The assessee stated that by this entire process, it is clear that the employees are required to wear the uniforms as provided by them and are required to change them and put them in the bin every day for getting them cleaned. This is a standard protocol which is required in order to maintain the hygiene levels within the factory premises, where the manufacture of goods take place. The allegation leveled in the show cause that the services were used at the guest house were primarily related to personal use is not correct.

93. The assessee stated that the dry cleaning and laundry services availed from the service provider are for dry cleaning of the uniform of the employees in order to maintain the standards of hygiene as prescribed by the BIS. Therefore, the said dry cleaning services are necessary in order to ensure standards of hygiene and accordingly the said services are as alleged can not be said to be for personal use or consumption of employees and the said services are used in or in relation to manufacture of their final product.

#### SHIVAM ENTERPRISES

94. The assessee stated that they have appointed Shivam Enterprises which provides manpower for sludge removal in the AZO area. They had not entered into a contract with Shivam for the provision of such manpower supply services and the said assignment was on work to work basis. For completion of the assignment, Shivam raised invoices on the assessee for the services provided and charged Service Tax on the same.

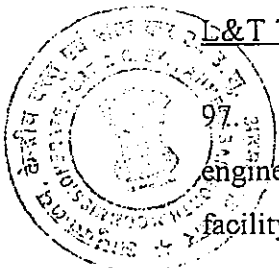
#### TATA BLUESCOPE STEEL LTD

95. The assessee raised a purchase order with Tala Bluescope Steel Ltd to supply parts of Steel Structures. Accordingly, Tata Bluescope Steel Ltd supplied the steel structures and provided the services for erection work as per the agreed terms. In the invoice raised by the Tata Bluescope Steel Ltd, for the erection works carried out a service tax of Rs.3,44,680/- was charged by them in relation to which the credit was availed by them.

96. They stated that they reversed the Cenvat Credit availed in respect of Tata Bluescope Steel amounting to Rs.3,44,680/- along with interest and claimed that no penalty be levied since the said amount is paid prior to issuance of show cause notice.

#### L&T TECHNOLOGY SERVICES AND JACOBS ENGINEERING INDIA PVT.LTD.

97. The assessee stated that L&T Technology Services was engaged by them to carry out engineering and CAPEX management for an on-going "Project Globe", existing Oral Care facility at Sanand, Gujarat. As per the assessee's requirement, existing area of the project was



required to be modified to facilitate installation of additional equipment. A techno-commercial proposal was provided by L&T activity for modification in existing facility at Sanand. Vide the said proposal, it was proposed that L&T will provide engineering services for modification, CAPEX Management and Construction Management Support for modification in "Project Globe", in a phase wise manner. It was stated that to facilitate modifications in the existing utility building and to facilitate installation of new equipment, some makeshift arrangement limited to piping network is envisaged.

#### XPERTZ ADVERTISING, EVENTS & PROMOTION

98. The assessee stated that on the inauguration ceremony of the expansion of the building had organized an event wherein various lenders and business associates of them were invited to acknowledgement the expansion of the Plant. XPERTZ Advertising, Event & Promotions was engaged by them to plan and organize the said inauguration ceremony.

99. I find that in the present case in hand, the following services on which Service Tax Credit has been taken by the assessee are disputed-

- i) Clearing Services & House Keeping Services
- ii) Dry Cleaning Services
- iii) Manpower Supply Services
- iv) Construction related services
- v) Consulting Services
- vi) Event Management Services

100. I find that in most of the cases, the services were used at far away places than the location of the factory of production. Some of them were used before commencement of production and even inaugural ceremonies of the Plant. Therefore, the said services can not be termed as input services as per Rule 2(1) of the Cenvat Credit Rules, 2004.

101. The show cause notice has alleged that the assessee consciously availed and utilized Cenvat credit of the tax paid on the services which they had reason to believe that they were not input services for them. I find that considering into the manufacturing activity of the assessee, their product, the said services are not input services. Therefore, the contention of the assessee that the said services are their input services are factually incorrect. To elaborate the issue, I produce below the definition of input services as per Rule 2(1) of the Cenvat Credit Rules, 2004.

[(1) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion,

market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

[*Explanation.* - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

102. On going through the definition, I find that the services mentioned above falls under excluded category of the definition of input services for the purpose for which it was utilized and the method of utilization in the present case. Therefore, I am of the view that the said services would not fall the definition of Rule 2(l) of the Cenvat Credit Rules, 2004 in so far as the and utilization of the said services by the assessee. Further, I find that in the case of Cenvat Credit utilized by the assessee in the case of services rendered by M/s.Tata Bluescope Steel Ltd, for erection related services, the assessee has accepted the wrong availment of Cenvat Credit and they reversed the Credit amounting to Rs.3,44,680/- along with interest of Rs.48,852/- relating to the period 2016-2017.. However, they failed to pay/reverse the wrongly availed Cenvat Credit for the subsequent years viz. 2017-18. The amount so reversed/paid by the assessee is to be appropriated against the wrongly availed Cenvat Credit availed by them.

103. When they reversed/paid the amount of wrongly availed Cenvat Credit for the year 2016-17 in respect of erection related services, I failed to understand why they ignored the same for the subsequent years. I find that all the above services under dispute on which Cenvat Credit has

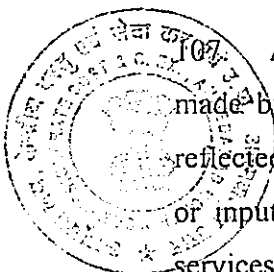
been availed by them do not fall within the definition of input services as per Rule 2(l) of the Cenvat Credit Rules, 2004, as such their argument to consider the same as input service and allow the Cenvat Credit availed by them not maintainable and therefore, rejected.

104. The assessee has stated that the entire demand in the show cause notice is barred by limitation. The assessee stated that in any event the SCN to the extent that it proposes to confirm demand for the period beyond normal period of limitation is time barred and deserves to be set aside. They also submitted that the SCN under reply is actually a follow on SCN issued post the audit conducted in the year 2017 of the records for the period from 2013 to March 2017. Therefore, the question of invocation of extended period of limitation does not arise in the first place. The assessee stated that the department was aware of all the facts while issuance of the earlier show cause notice and therefore the present SCN, could only have been issued within the normal period of limitation. They submitted that it is a settled position in law that, when all the facts are in knowledge of the department, while issuing the subsequent SCN on same/similar facts, no suppression of facts can be alleged on the part of the assessee. They relied the case of Nizam Sugar Factory Vs CCE, AP (2006(197)ELT 465 (SC). Therefore, they stated that the entire demand in the show cause notice is liable to be set aside being barred by limitation.

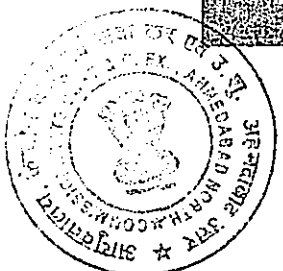
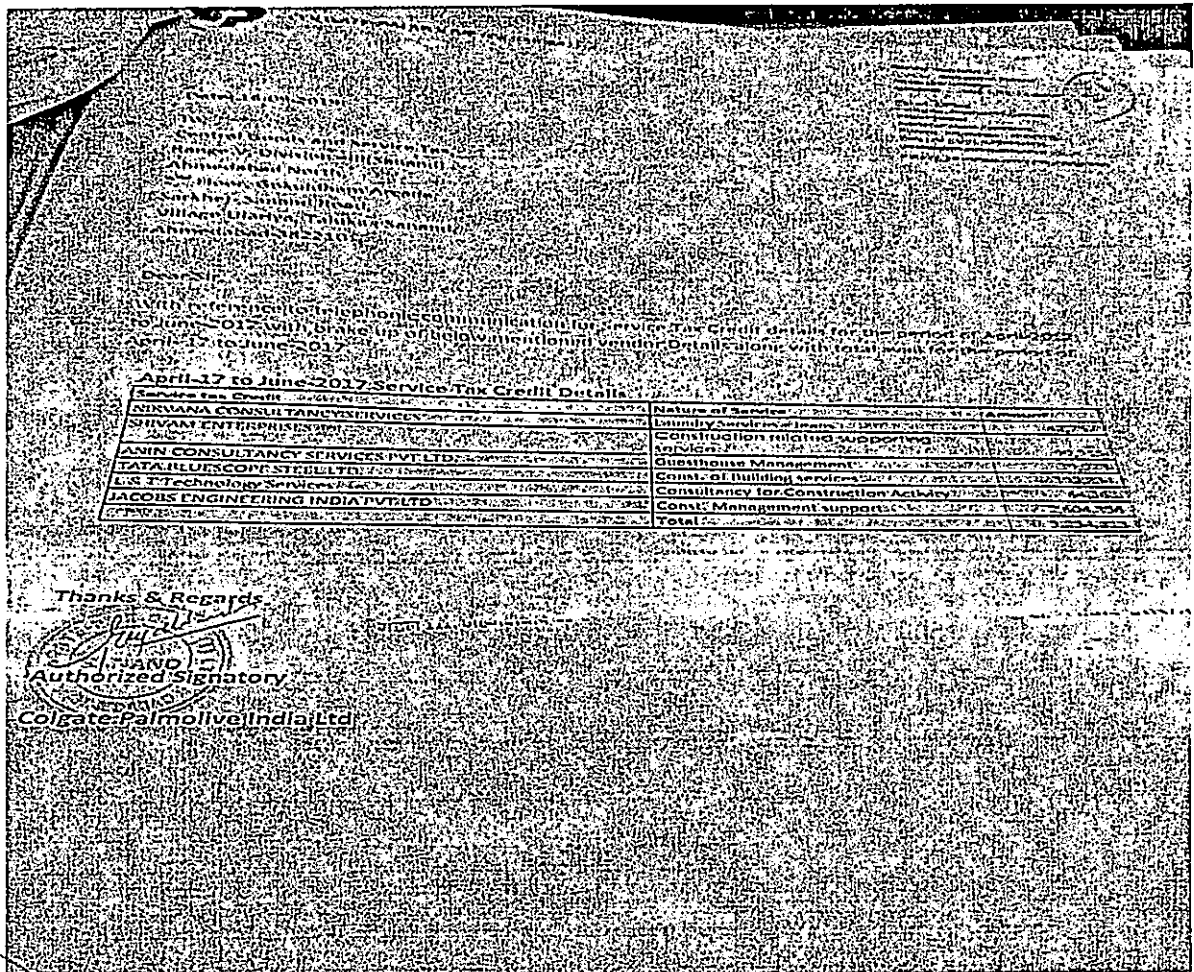
105. The assessee also submitted that in the present case they have neither made any misstatement, suppressed any facts nor did they have any intention to evade payment of tax and hence, the provisions of Section 11A(4) of the Central Excise Act are not imposable. They have also not made any conscious efforts to suppress the facts nor has intended to evade payment of duty. Thus, the invocation of the extended period of limitation is untenable on law. They relied the case of CCE Vs Chemphar Drugs and Liniments (1989 (40) ELT 276 (SC)), Lubrichem Industries Ltd Vs CCE (1994 (73) ELT 257 (SC)) and Pushpam Pharmaceuticals Co Vs, CCE (1995)78 ELT 401 (SC).

106. In the present regime of liberalization, self-assessment and filing of ER-1 returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such wrong availment of Cenvat credit only during audit or preventive/other checks. Therefore the Government in its wisdom has incorporated the provisions of Rule 9 of the Cenvat Credit Rules, 2004 to cast upon the burden of proof of Admissibility of Cenvat credit on the manufacturer or output service provider taking such credit. It is clear that the assessee has concealed all this information from the department deliberately, consciously and purposefully to evade payment of duty by utilizing wrongly availed Cenvat credit.

As already stated above, the Department do not have any information on the transaction made by the assessee with regard to the availment of Cenvat Credit. Though the amount is reflected in the ER-1 Return submitted by the assessee on monthly basis, no service particulars or input material-wise particulars are available with the Department. The utilization of input services excluded in the Rule 2(l) of the Cenvat Credit Rules, 2004 have not been intimated by



the assessee to the Department. The assessee's contention is that they received show cause notice on the basis of EA-2000 audit for the earlier period and this SCN is follow-up SCN. In the instant case, the assessee knew that this is a disputed service and the issue has not reached finality as the Commissioner(A) had allowed only a small amount of input Credit in their favour. Even though they knew that the Cenvat Credit they availed are disputed, they continued to avail the Credit violating the Cenvat Credit Rules, 2004 and it came to light that they were following the practice of wrong availment of Cenvat Credit on Services of disputable nature only during the course of CERA Audit. The assessee should have restrained themselves in the utilization of disputed Cenvat Credit. So, in my opinion, even though they were aware that the Cenvat Credit utilized by them for the disputed services are ineligible to them, they purposely used the same as input Credit. This amounts to willful mis-statement and suppression of facts. Therefore, the Department has rightly invoked the extended period of limitation in issuing SCN. Such wrong utilization of input Service Credit again and again by the assessee came to the knowledge of the Department only during the course of CERA Audit for the subsequent period. Therefore, I feel that the assessee has made wrong interpretation of the case laws cited above. Further, I find that they had not furnished correct information for the period 2017-18 earlier as is evident from the following letters dated 16.09.2019 and 18.09.2019 submitted by the assessee under which they submitted the information of wrongly availed Cenvat Credit on various input services which were, in fact, ineligible to them considering their product manufactured and the situation relevant to the utilization of the said Credit. It is to mention here that the show cause notice has been issued based on the information supplied by the assessee to the Department.





Date: 18.09.2019  
 To  
 Central Goods and Service Tax  
 Range V, Division III (Sanand)  
 Ahmedabad North  
 Floor: Gokuldhani Arcade  
 Sarkhel, Sanand Road  
 Village Ulariya, Taluka Sanand  
 Ahmedabad-382210

Colgate Palmolive India Limited  
 Sanand Plant  
 Sanand, Ahmedabad  
 Gujarat-382210  
 India  
 Tel: 079-22142721  
 Fax: 079-22142722  
 Email: [colgate@colgate.com](mailto:colgate@colgate.com)

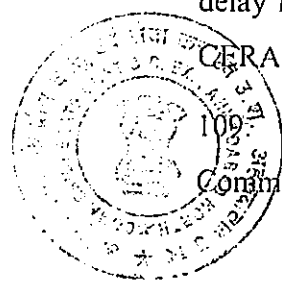
Dear Sir,  
 With reference to our telephonic communication as suggested please find here with the details of ITC  
 Details  
**Colgate Palmolive (India) Limited, Sanand Plant**

BMS No.	Service Tax Credit	Description	Amount
	Nirvana Consultancy	Laundry Services	
	Shivam Enterprises	Construction related supporting service	75,995
	Anin Consultancy	Guesthouse Management	198,585
	Tata Bluescope	Construction related service	159,446
	L&T Technology Service	Consultancy for Construction Activity	344,680
	Jacob Engineering India P. Ltd	Construction related service	1,994,176
	XPERTZ Advertising Events & Promotions	Event management service Invoice for Colgate Palmolive Building Expansion, Sanand	3,716,398
			70,052
		<b>Total Amount</b>	<b>6,559,331</b>

Thanks & Regards  
  
 Authorized Signatory  
 Colgate Palmolive India Ltd

108. From the above two letters dated 16.09.2019 and 18.09.2019 submitted by the assessee under which relevant information in respect of the disputed services rendered by various service providers upto the period of June 2017 was submitted only in the month of September 2019. The show cause notice in the present case was issued on 30.01.2020. Also, the assessee had filed ER-1 Return for the month of April 2016 on 06.05.2016 on which the assessee claimed ITC on ineligible services. As per the time limit prescribed for issuance of show cause notice, the show cause notice can be issued upto 04.05.2021. From the above, it is understandable that the delay has occurred on the part of the assessee in submitting the correct information (on the GERA HM-8) and not on the Department.

109. I also find that during the course of recording the statement of Shri Mudit Agarwal, Commercial Manager & Authorised Signatory of M/s. Colgate Palmolive India Limited recorded



under Section 14 of Central Excise Act, 1944 on 13.12.2018, he stated that their stand remained the same on their reply submitted on 01.03.2018. Further, he submitted the details for the period April 2017 to June 2017 in respect of Cenvat Credit availed to the tune of Rs. 32,34,814/- on non-specified input services, as objected by CERA. In the said submission vide their letter dated 01.03.2018 they had explained service-wise utilization of Service.

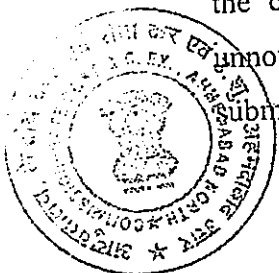
110. From the above, it is clear that on the date of recording of their statement, the assessee had not submitted full details even on the date of recording of their statement. It is only during the month of September 2019 they submitted the full details. Under the circumstances, blaming the Department on the pretext of 'extended period not applicable' would not serve any purpose.

111. Further, I would like to rely on para 2.8 of the Master Circular No.1053/02/2017-CX dated 10.03.2017 issued by the CBEC (now CBIC), New Delhi, wherein it has been clarified that

"2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however, if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg (Wvg) Co, Vs UOI 1982(010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient". I find that the case law quoted in the aforesaid Circular is squarely applicable to the present case and the claim of the assessee that extended period would not be applicable in the present show cause notice is not tenable in view of the fact that the assessee themselves have not produced the required information to the Department. Under the circumstances, I hold that the assessee is liable to reverse/pay the wrongly availed Cenvat Credit on various input services, which were, in fact, not eligible for them to avail as input services.

112. In view of the discussion above, it is clear that the said assessee has consciously availed and utilized Cenvat credit of the tax paid on the services which they had reason to believe that they were not input services for them. Further, in the case of service provided by M/s.Tata Bluescope Steel Ltd used for erection activity on which they wrongly availed Cenvat Credit, the assessee paid Rs.3,44,680/- along with interest of Rs.48,852/- for the year 2016-17. They failed to pay the amount of wrongly availed Cenvat Credit for the subsequent period. The amount paid by the assessee is to be appropriated and adjusted against the amount of wrongly availed Cenvat Credit demanded from them.

113. I find that there is nothing new in the submission made by the assessee as they had submitted similar written submission earlier also. In fact, if the CERA had not pointed out about the continued availment of ineligible Cenvat Credit by the assessee, it would have gone unnoticed causing huge loss to the Government exchequer. I also find that the assessee submitted a lengthy written submission supporting their stand and relied a large number of case





laws including Supreme Court cases stating that the Show Cause Notice is not sustainable, extended period is not invocable in the present case interest and penalty are not imposable in the present case. I find that the said case laws are distinguishable as the facts of the present case are different. It is the assessee, who delayed the submission of the full information to the Department. Had they given the full details on the date of recording the statement of their official, this situation would not have arisen. Accordingly, I hold that the wrongly availed Cenvat Credit by willful misstatement and suppression of facts. The said wronglyavailed Cenvat Credit is liable to be recored from the assessee in terms of Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004. They are also liable to pay interest on the wrongly availed Cenvat Credit in terms of Rule 14(1)(ii) of the Cenvat Credit Rules 2004 read with Section 11AA of the Central Excise Act, 1944 and penalty in terms of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC(1)( c ) of the Central Excise Act, 1944. Therefore, I find that extended period is rightly invoked in the present case, interest has rightly demanded and penalty has rightly proposed in the show cause notice.

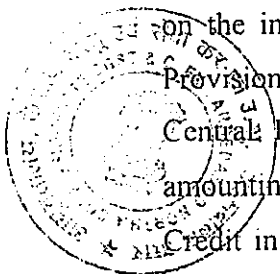
114. In the present regime of liberalization, self-assessment and filing of ER – 1 returns are done online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such wrong availment of Cenvat credit only during audit or preventive/other checks. Therefore the Government in its wisdom has incorporated the provisions of Rule 9 of the Cenvat Credit Rules, 2004 to cast upon the burden of proof of Admissibility of Cenvat credit on the manufacturer or output service provider taking such credit. All these information has been concealed from the department deliberately, consciously and purposefully to evade payment of duty by utilizing wrongly availed Cenvat credit. Therefore, in this case all essential ingredients exist to invoke the extended period under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 to demand the Cenvat credit wrongly availed.

115. The assessee have rendered themselves liable to penalty in terms of the provisions of Rule 15 (2) of the CENVAT Credit Rules, 2004 read with clause (c) of sub-section (1) of section 11AC of the Excise Act for the above said contravention and suppression of material facts from the department with intent to evade payment of duty. Interest is also liable to be charged and recovered from them under the provisions of Rule 14 of the CENVAT Credit rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

116. In view of the above discussion and findings, I pass the following orders-

#### ORDER

(i) I disallow the wrongly availed Cenvat Credit amounting to Rs.97,94,145/- (Rupees Ninty Seven Lacs, ninty Four Thousand and One Hundred and Forty Five only) availed by the assessee on the ineligible services and order that the said amount be recovered from them under the Provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The Cenvat Credit already reversed and paid by the assessee amounting to Rs. 3,44,680/- is appropriated and adjusted towards the wrongly availed Cenvat Credit in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the



Central Excise Act, 1944. The amount of interest paid by the assessee amounting Rs.48852/- is appropriated and adjusted towards interest payable by the assessee in terms of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with provision of Section 11AA of the Central Excise Act, 1944;

(ii) I order M/s.Colgate Palmolive India Ltd to pay interest at the prescribed rate on the remaining amount of wrongly availed Cenvat Credit under the Provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with provision of Section 11AA of the Central Excise Act, 1944;

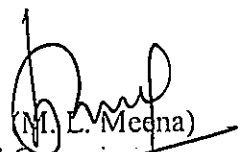
(iii) I impose a penalty of Rs.97,94,145/- (Rupees ninety seven lakhs ninety four thousand one hundred forty five only) on M/s.Colgate Palmolive India Ltd, Sanand, Ahmedabad under the Provisions of Rule 15 (2) of the CENVAT Credit Rules, 2004 read with provision of Section 11AC(1)(c) of the Central Excise Act, 1944.

(iv) I further order that in terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Colgate Palmolive India Ltd, Sanand, Ahmedabad, pays the amount of wrongly availed Cenvat Credit/Service Tax/Central Excise duty determined at Sl. No. (i) above, and interest payable thereon at (ii) above, within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Colgate Palmolive India Ltd, Sanand, Ahmedabad shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

117. Show Cause Notice No.V.33/15-02/OA/2019 dated 30.01.2020 issued to M/s.Colgate Palmolive India Ltd, SM-02, GIDC Industrial Estate, Near BOL Village, Sanand, Ahmedabad 382 170 is disposed-off in the above manner.



F. No.:V.33/15-02/OA/2019

  
(M. L. Meena)  
Additional Commissioner  
CGST & C. Excise  
Ahmedabad North

Dated:11.03.2021

**BY Regd. Post A.D./ HAND DELIVERY**

To,

M/s. Colgate Palmolive India Ltd., 0  
SM-02, GIDC Industrial Estate,  
Near BOL Village,  
Sanand, Ahmedabad - 382170.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Deputy/Assistant Commissioner CGST, Division-III (Sanand), Ahmedabad- North.
3. The Superintendent, CGST, AR -V, Division-III (Sanand), Ahmedabad- North.
4. Guard File.